

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO COMMITTEE PRINT
OFFERED BY MR. THOMAS
[Substitute for H.R. 4157]

Strike all after the enacting clause and insert the following:

1 SEC. 1. SHORT TITLE AND TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Health Information Technology Promotion Act of 2006”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Office of the National Coordinator for Health Information Technology.

Sec. 3. Safe harbors for provision of health information technology and services
to health care professionals.

Sec. 4. Commonality and variation in health information laws and regulations.

Sec. 5. Implementing modern coding system; application under part A of the
Medicare program.

Sec. 6. Procedures to ensure timely updating of standards that enable elec-
tronic exchanges.

Sec. 7. Report on the American Health Information Community.

Sec. 8. Strategic plan for coordinating implementation of health information
technology.

Sec. 9. Promotion of telehealth services.

6 SEC. 2. OFFICE OF THE NATIONAL COORDINATOR FOR
7 HEALTH INFORMATION TECHNOLOGY.

8 (a) IN GENERAL.—Title II of the Public Health Serv-
9 ice Act is amended by adding at the end the following new
10 part:

1 “PART D—HEALTH INFORMATION TECHNOLOGY

2 “OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH
3 INFORMATION TECHNOLOGY

4 “SEC. 271. (a) ESTABLISHMENT.—There is estab-
5 lished within the Department of Health and Human Serv-
6 ices an Office of the National Coordinator for Health In-
7 formation Technology that shall be headed by the National
8 Coordinator for Health Information Technology (referred
9 to in this section as the ‘National Coordinator’). The Na-
10 tional Coordinator shall be appointed by the President and
11 shall report directly to the Secretary. The National Coor-
12 dinator shall be paid at a rate equal to the rate of basic
13 pay for level IV of the Executive Schedule.

14 “(b) GOALS OF NATIONWIDE INTEROPERABLE
15 HEALTH INFORMATION TECHNOLOGY INFRASTRUC-
16 TURE.—The National Coordinator shall perform the du-
17 ties under subsection (c) in a manner consistent with the
18 development of a nationwide interoperable health informa-
19 tion technology infrastructure that—

20 “(1) improves health care quality, reduces med-
21 ical errors, increases the efficiency of care, and ad-
22 vances the delivery of appropriate, evidence-based
23 health care services;

24 “(2) promotes wellness, disease prevention, and
25 management of chronic illnesses by increasing the

1 availability and transparency of information related
2 to the health care needs of an individual for such in-
3 dividual;

4 “(3) ensures that appropriate information nec-
5 essary to make medical decisions is available in a us-
6 able form at the time and in the location that the
7 medical service involved is provided;

8 “(4) produces greater value for health care ex-
9 penditures by reducing health care costs that result
10 from inefficiency, medical errors, inappropriate care,
11 and incomplete information;

12 “(5) promotes a more effective marketplace,
13 greater competition, greater systems analysis, in-
14 creased choice, enhanced quality, and improved out-
15 comes in health care services;

16 “(6) improves the coordination of information
17 and the provision of such services through an effec-
18 tive infrastructure for the secure and authorized ex-
19 change and use of health care information; and

20 “(7) ensures that the confidentiality of individ-
21 ually identifiable health information of a patient is
22 secure and protected.

23 “(c) DUTIES OF NATIONAL COORDINATOR.—

24 “(1) STRATEGIC PLANNER FOR INTEROPER-
25 ABLE HEALTH INFORMATION TECHNOLOGY.—The

1 National Coordinator shall maintain, direct, and
2 oversee the continuous improvement of a strategic
3 plan to guide the nationwide implementation of
4 interoperable health information technology in both
5 the public and private health care sectors consistent
6 with subsection (b).

7 “(2) PRINCIPAL ADVISOR TO HHS.—The Na-
8 tional Coordinator shall serve as the principal advi-
9 sor of the Secretary on the development, application,
10 and use of health information technology, and co-
11 ordinate the health information technology programs
12 of the Department of Health and Human Services.

13 “(3) COORDINATOR OF FEDERAL GOVERNMENT
14 ACTIVITIES.—

15 “(A) IN GENERAL.—The National Coordi-
16 nator shall serve as the coordinator of Federal
17 Government activities relating to health infor-
18 mation technology.

19 “(B) SPECIFIC COORDINATION FUNC-
20 TIONS.—In carrying out subparagraph (A), the
21 National Coordinator shall provide for—

22 “(i) the development and approval of
23 standards used in the electronic creation,
24 maintenance, or exchange of health infor-
25 mation; and

1 “(ii) the certification and inspection of
2 health information technology products, ex-
3 changes, and architectures to ensure that
4 such products, exchanges, and architec-
5 tures conform to the applicable standards
6 approved under clause (i).

7 “(C) USE OF PRIVATE ENTITIES.—The
8 National Coordinator shall, to the maximum ex-
9 tent possible, contract with or recognize private
10 entities in carrying out subparagraph (B).

11 “(D) UNIFORM APPLICATION OF STAND-
12 ARDS.—A standard approved under subpara-
13 graph (B)(i) for use in the electronic creation,
14 maintenance, or exchange of health information
15 shall preempt a standard adopted under State
16 law, regulation, or rule for such a use.

17 “(4) INTRAGOVERNMENTAL COORDINATOR.—
18 The National Coordinator shall ensure that health
19 information technology policies and programs of the
20 Department of Health and Human Services are co-
21 ordinated with those of relevant executive branch
22 agencies and departments with a goal to avoid dupli-
23 cation of effort and to ensure that each agency or
24 department conducts programs within the areas of
25 its greatest expertise and its mission in order to cre-

1 ate a national interoperable health information sys-
2 tem capable of meeting national public health needs
3 effectively and efficiently.

4 “(5) ADVISOR TO OMB.—The National Coordi-
5 nator shall provide to the Director of the Office of
6 Management and Budget comments and advice with
7 respect to specific Federal health information tech-
8 nology programs.

9 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated such sums as may be
11 necessary to carry out this section for each of fiscal years
12 2006 through 2010.”.

13 (b) TREATMENT OF EXECUTIVE ORDER 13335.—Ex-
14 ecutive Order 13335 shall not have any force or effect
15 after the date of the enactment of this Act.

16 (c) TRANSITION FROM ONCHIT UNDER EXECUTIVE
17 ORDER.—

18 (1) IN GENERAL.—All functions, personnel, as-
19 sets, liabilities, administrative actions, and statutory
20 reporting requirements applicable to the old Na-
21 tional Coordinator or the Office of the old National
22 Coordinator on the date before the date of the enact-
23 ment of this Act shall be transferred, and applied in
24 the same manner and under the same terms and
25 conditions, to the new National Coordinator and the

1 Office of the new National Coordinator as of the
2 date of the enactment of this Act.

3 (2) ACTING NATIONAL COORDINATOR.—Before
4 the appointment of the new National Coordinator,
5 the old National Coordinator shall act as the Na-
6 tional Coordinator for Health Information Tech-
7 nology until the office is filled as provided in section
8 271(a) of the Public Health Service Act, as added
9 by subsection (a). The President may appoint the
10 old National Coordinator as the new National Coor-
11 dinator.

12 (3) DEFINITIONS.—For purposes of this sub-
13 section:

14 (A) NEW NATIONAL COORDINATOR.—The
15 term “new National Coordinator” means the
16 National Coordinator for Health Information
17 Technology appointed under section 271(a) of
18 the Public Health Service Act, as added by sub-
19 section (a).

20 (B) OLD NATIONAL COORDINATOR.—The
21 term “old National Coordinator” means the
22 National Coordinator for Health Information
23 Technology appointed under Executive Order
24 13335.

1 **SEC. 3. SAFE HARBORS FOR PROVISION OF HEALTH INFOR-**
2 **MATION TECHNOLOGY AND SERVICES TO**
3 **HEALTH CARE PROFESSIONALS.**

4 (a) FOR CIVIL PENALTIES.—Section 1128A(b) of the
5 Social Security Act (42 U.S.C. 1320a-7a(b)) is amended
6 by adding at the end the following new paragraph:

7 “(4)(A) For purposes of this subsection, a payment
8 described in paragraph (1) does not include any nonmone-
9 tary remuneration (in the form of health information tech-
10 nology and related services) made on or after the HIT ef-
11 fective date (as defined in subparagraph (B)(ii)) by a hos-
12 pital or critical access hospital to a physician if the fol-
13 lowing requirements are met:

14 “(i) The provision of such remuneration is
15 made without a condition that—

16 “(I) limits or restricts the use of the health
17 information technology to services provided by
18 the physician to individuals receiving services at
19 the location of the hospital or critical access
20 hospital providing such technology;

21 “(II) limits or restricts the use of the
22 health information technology in conjunction
23 with other health information technology; or

24 “(III) takes into account the volume or
25 value of referrals (or other business generated)

1 by the physician to the hospital or critical ac-
2 cess hospital.

3 “(ii) Such remuneration is arranged for in a
4 written agreement that is signed by a representative
5 of the hospital or critical access hospital and by the
6 physician and that specifies the remuneration made
7 and states that the provision of such remuneration
8 is made for the primary purpose of better coordina-
9 tion of care or improvement of health care quality or
10 efficiency.

11 “(B) For purposes of subparagraph (A) and sections
12 1128B(b)(3)(J) and 1877(e)(9)—

13 “(i) the term ‘health information technology’
14 means hardware, software, license, intellectual prop-
15 erty, equipment, or other information technology (in-
16 cluding new versions, upgrades, and connectivity) or
17 related services used for the electronic creation,
18 maintenance, and exchange of clinical health infor-
19 mation; and

20 “(ii) the term ‘HIT effective date’ means the
21 date that is 180 days after the date of the enact-
22 ment of this paragraph.”.

23 (b) FOR CRIMINAL PENALTIES.—Section
24 1128B(b)(3) of such Act (42 U.S.C. 1320a-7b(b)(3)) is
25 amended—

1 (1) in subparagraph (G), by striking “and” at
2 the end;

3 (2) in the subparagraph (H) added by section
4 237(d) of the Medicare Prescription Drug, Improve-
5 ment, and Modernization Act of 2003 (Public Law
6 108–173; 117 Stat. 2213)—

7 (A) by moving such subparagraph 2 ems to
8 the left; and

9 (B) by striking the period at the end and
10 inserting a semicolon;

11 (3) in the subparagraph (H) added by section
12 431(a) of such Act (117 Stat. 2287)—

13 (A) by redesignating such subparagraph as
14 subparagraph (I);

15 (B) by moving such subparagraph 2 ems
16 to the left; and

17 (C) by striking the period at the end and
18 inserting “; and”; and

19 (4) by adding at the end the following new sub-
20 paragraph:

21 “(J) any nonmonetary remuneration (in the
22 form of health information technology, as defined in
23 section 1128A(b)(4)(B)(i), and related services) so-
24 licited or received by a person on or after the HIT
25 effective date (as defined in section

1 1128A(b)(4)(B)(ii)) (or offered or paid to a person
2 on or after such date) if—

3 “(i) such remuneration is solicited or re-
4 ceived (or offered or paid) without a condition
5 that—

6 “(I) limits or restricts the use of the
7 health information technology to services
8 provided by the person to individuals re-
9 ceiving services at the location of the entity
10 providing such technology;

11 “(II) limits or restricts the use of the
12 health information technology in conjunc-
13 tion with other health information tech-
14 nology; or

15 “(III) takes into account the volume
16 or value of referrals (or other business
17 generated) by the person to the entity pro-
18 viding such technology; and

19 “(ii) such remuneration is arranged for in
20 a written agreement that is signed by a rep-
21 resentative of the entity and by the physician
22 and that specifies the remuneration made and
23 states that the provision of such remuneration
24 is made for the primary purpose of better co-

1 ordination of care or improvement of health
2 care quality or efficiency.”.

3 (c) FOR LIMITATION ON CERTAIN PHYSICIAN RE-
4 FERRALS.—Section 1877(e) of such Act (42 U.S.C.
5 1395nn(e)) is amended by adding at the end the following
6 new paragraph:

7 “(9) INFORMATION TECHNOLOGY AND SERV-
8 ICES.—Any nonmonetary remuneration (in the form
9 of health information technology, as defined in sec-
10 tion 1128A(b)(4)(B)(i), and related services) made
11 on or after the HIT effective date (as defined in sec-
12 tion 1128A(b)(4)(B)(ii)) by an entity to a physician
13 if the following requirements are met:

14 “(A) The provision of such remuneration is
15 made without a condition that—

16 “(i) limits or restricts the use of the
17 health information technology to services
18 provided by the physician to individuals re-
19 ceiving services at the location of the entity
20 providing such technology;

21 “(ii) limits or restricts the use of the
22 health information technology in conjunc-
23 tion with other health information tech-
24 nology; or

1 “(iii) takes into account the volume or
2 value of referrals (or other business gen-
3 erated) by the physician to the entity pro-
4 viding such technology.

5 “(B) Such remuneration is arranged for in
6 a written agreement that is signed by a rep-
7 resentative of the entity and by the physician
8 and that specifies the remuneration made and
9 states that the provision of such remuneration
10 is made for the primary purpose of better co-
11 ordination of care or improvement of health
12 care quality or efficiency.”.

13 (d) REGULATION, EFFECTIVE DATE, AND EFFECT
14 ON STATE LAWS.—

15 (1) REGULATIONS.—Not later than the HIT ef-
16 fective date, the Secretary of Health and Human
17 Services shall promulgate such regulations as may
18 be necessary to carry out the provisions of this sec-
19 tion.

20 (2) HIT EFFECTIVE DATE DEFINED.—For pur-
21 poses of this subsection and subsection (e), the term
22 “HIT effective date” has the meaning given such
23 term in section 1128A(b)(4)(B)(ii) of the Social Se-
24 curity Act, as added by subsection (a).

1 (3) PREEMPTION OF STATE LAWS.—No State
2 (as defined in section 4(c)(3)) shall have in effect a
3 State law that imposes a criminal or civil penalty for
4 a transaction described in section 1128A(b)(4),
5 1128B(b)(3)(J), or 1877(e)(9) of the Social Security
6 Act, as added by this section, if the conditions de-
7 scribed in the respective section of such Act, with re-
8 spect to such transaction, are met.

9 (e) STUDY AND REPORT TO ASSESS EFFECT OF
10 SAFE HARBORS AND EXCEPTION ON HEALTH SYSTEM.—

11 (1) IN GENERAL.—The Secretary of Health and
12 Human Services shall conduct a study to determine
13 the impact of each of the safe harbors and the ex-
14 ception described in paragraph (3). In particular,
15 the study shall examine the following:

16 (A) The effectiveness of each safe harbor
17 and exception in increasing the adoption of
18 health information technology.

19 (B) The types of health information tech-
20 nology provided under each safe harbor and ex-
21 ception.

22 (C) The extent to which the financial or
23 other business relationships between providers
24 under each safe harbor or exception have
25 changed as a result of the safe harbor or excep-

1 tion in a way that affects the health care sys-
2 tem, affects choices available to consumers, or
3 affects health care expenditures.

4 (2) REPORT.—Not later than three years after
5 the HIT effective date, the Secretary of Health and
6 Human Services shall submit to Congress a report
7 on the study under paragraph (1) and shall include
8 such recommendations for changes in the safe har-
9 bors and exception as the Secretary determines may
10 be appropriate.

11 (3) SAFE HARBORS AND EXCEPTION DE-
12 SCRIBED.—For purposes of this subsection, the safe
13 harbors and exception described in this paragraph
14 are—

15 (A) the safe harbor under section
16 1128A(b)(4) of the Social Security Act (42
17 U.S.C. 1320a-7a(b)(4)), as added by subsection
18 (a);

19 (B) the safe harbor under section
20 1128B(b)(3)(J) of such Act (42 U.S.C. 1320a-
21 7b(b)(3)(J)), as added by subsection (b); and

22 (C) the exception under section 1877(e)(9)
23 of such Act (42 U.S.C. 1395nn(e)(9)), as added
24 by subsection (c).

1 **SEC. 4. COMMONALITY AND VARIATION IN HEALTH INFOR-**
2 **MATION LAWS AND REGULATIONS.**

3 (a) STUDY TO DETERMINE IMPACT OF VARIATION
4 AND COMMONALITY IN STATE HEALTH INFORMATION
5 LAWS AND REGULATIONS.—

6 (1) IN GENERAL.—For purposes of promoting
7 the development of a nationwide interoperable health
8 information technology infrastructure consistent
9 with section 271(b) of the Public Health Service Act
10 (as added by section 2(a)), the Secretary of Health
11 and Human Services shall conduct a study of the
12 impact of variation in State security and confiden-
13 tiality laws and current Federal security and con-
14 fidentiality standards on the timely exchanges of
15 health information in order to ensure the availability
16 of health information necessary to make medical de-
17 cisions at the location in which the medical care in-
18 volved is provided. Such study shall examine—

19 (A)(i) the degree of variation and com-
20 monality among the requirements of such laws
21 for States; and

22 (ii) the degree of variation and com-
23 monality between the requirements of such laws
24 and the current Federal standards;

1 (B) insofar as there is variation among
2 and between such requirements, the strengths
3 and weaknesses of such requirements; and

4 (C) the extent to which such variation may
5 adversely impact the secure, confidential, and
6 timely exchange of health information among
7 States, the Federal government, and public and
8 private entities, or may otherwise impact the re-
9 liability of such information.

10 (2) REPORT.—Not later than 18 months after
11 the date of the enactment of this Act, the Secretary
12 of Health and Human Services shall submit to Con-
13 gress a report on the study under paragraph (1) and
14 shall include in such report the following:

15 (A) ANALYSIS OF NEED FOR GREATER
16 COMMONALITY.—A determination by the Sec-
17 retary on the extent to which there is a need for
18 greater commonality of the requirements of
19 State security and confidentiality laws and cur-
20 rent Federal security and confidentiality stand-
21 ards to better protect or strengthen the security
22 and confidentiality of health information in the
23 timely exchange of health information among
24 States, the Federal government, and public and
25 private entities.

1 (B) RECOMMENDATIONS FOR GREATER
2 COMMONALITY.—Insofar as the Secretary deter-
3 mines under subparagraph (A) that there is a
4 need for greater commonality of such require-
5 ments, the extent to which (and how) the cur-
6 rent Federal standards should be changed, and
7 the extent to which (and how) the State laws
8 should be conformed, in order to provide the
9 commonality needed to better protect or
10 strengthen the security and confidentiality of
11 health information in the timely exchange of
12 health information.

13 (b) IMPLEMENTATION OF RECOMMENDATIONS IF
14 CONGRESS FAILS TO ACT.—

15 (1) IN GENERAL.—If the conditions under para-
16 graph (2) are met, the Secretary shall, by regula-
17 tion, modify the current Federal security and con-
18 fidentiality standards to the extent that the Sec-
19 retary determines it necessary in order to achieve
20 the needed degree of commonality to better protect
21 or strengthen the security and confidentiality of
22 health information in the timely exchange of health
23 information. Such a modification shall be based
24 upon the recommendations described in subsection
25 (a)(2)(B), and if the Secretary modifies a current

1 Federal security and confidentiality standard, the
2 modified standard shall supersede (and the Sec-
3 retary shall limit the permissibility of) any State se-
4 curity and confidentiality law that relates to (but is
5 different from) such standard.

6 (2) CONDITIONS.—The conditions under this
7 paragraph are the following:

8 (A) NEED FOR GREATER COMMONALITY.—

9 The Secretary determines under subsection
10 (a)(2)(A) that there is a need for greater com-
11 monality in the requirements of State security
12 and confidentiality laws and current Federal se-
13 curity and confidentiality standards to better
14 protect or strengthen the security and confiden-
15 tiality of health information in the timely ex-
16 change of health information among States, the
17 Federal government, and public and private en-
18 tities.

19 (B) CONGRESSIONAL FAILURE TO ACT.—

20 The Congress fails to enact, within 18 months
21 after the date of receipt of the report under
22 subsection (a)(2), legislation that specifically re-
23 sponds to the recommendations described in
24 subsection (a)(2)(B). Such legislation may in-
25 clude any action described in paragraph (1) (re-

1 lating to modifying Federal security and con-
2 fidentiality standards).

3 (3) TREATMENT OF CURRENT LAWS AND
4 STANDARDS.—

5 (A) CONTINUATION OF CURRENT FEDERAL
6 STANDARDS AND STATE LAWS PERMITTED.—

7 Nothing in this subsection shall be construed as
8 preventing the Secretary from continuing to
9 apply the current Federal security and con-
10 fidentiality standards and from permitting the
11 continuance of State security and confiden-
12 tiality laws if such standards are not modified.

13 (B) NO PREEMPTION OF STATE LAW UN-
14 LESS RULE ADOPTED.—A State security and
15 confidentiality law shall not be preempted under
16 paragraph (1), except to the extent the Sec-
17 retary limits the application of such law under
18 such paragraph. The Secretary's exercise of
19 such authority supercedes the provisions of sec-
20 tion 1178(a) of the Social Security Act (42
21 U.S.C. 1320d-7(a)) and section 264(c)(2) of the
22 Health Insurance Portability and Accountability
23 Act of 1996 (42 U.S.C. 1320d-2 note).

24 (c) DEFINITIONS.—For purposes of this section:

1 (1) CURRENT FEDERAL SECURITY AND CON-
2 FIDENTIALITY STANDARDS.—The term “current
3 Federal security and confidentiality standards”
4 means the Federal privacy standards established
5 pursuant to section 264(c) of the Health Insurance
6 Portability and Accountability Act of 1996 (42
7 U.S.C. 1320d-2 note) and security standards estab-
8 lished under section 1173(d) of the Social Security
9 Act.

10 (2) SECRETARY.—The term “Secretary” means
11 the Secretary of Health and Human Services.

12 (3) STATE.—The term “State” has the mean-
13 ing given such term when used in title XI of the So-
14 cial Security Act, as provided under section 1101(a)
15 of such Act (42 U.S.C. 1301(a)).

16 (4) STATE SECURITY AND CONFIDENTIALITY
17 LAWS.—The term “State security and confidentiality
18 laws” means State laws and regulations relating to
19 the privacy and confidentiality of health information
20 or to the security of such information.

21 (d) CONFORMING AMENDMENTS.—

22 (1) HIPAA.—Section 264(c)(2) of the Health
23 Insurance Portability and Accountability Act of
24 1996 (42 U.S.C. 1320d-2 note) is amended by strik-
25 ing “A regulation” and inserting “Subject to section

1 4(b) of the Health Information Technology Pro-
2 motion Act of 2006, a regulation”.

3 (2) TITLE XI.—Section 1178(a) of the Social
4 Security Act (42 U.S.C. 1320d-7(a)) is amended, in
5 the matter before paragraph (1), by inserting “Sub-
6 ject to section 4(b) of the Health Information Tech-
7 nology Promotion Act of 2006—” after “GENERAL
8 EFFECT.—”.

9 **SEC. 5. IMPLEMENTING MODERN CODING SYSTEM; APPLI-**
10 **CATION UNDER PART A OF THE MEDICARE**
11 **PROGRAM.**

12 (a) UPGRADING ASC X12 AND NCPDP STAND-
13 ARDS.—

14 (1) IN GENERAL.—The Secretary of Health and
15 Human Services shall provide by notice published in
16 the Federal Register for the following replacements
17 of standards to apply, including for purposes of part
18 A of title XVIII of such Act:

19 (A) ACCREDITED STANDARDS COMMITTEE
20 X12 (ASC X12) STANDARD.—The replacement of
21 the Accredited Standards Committee X12 (ASC
22 X12) version 4010 adopted under section
23 1173(a) of such Act (42 U.S.C. 1320d-2(a))
24 with the ASC X12 version 5010, as reviewed by

1 the National Committee on Vital Health Statis-
2 tics.

3 (B) NATIONAL COUNCIL FOR PRESCRIP-
4 TION DRUG PROGRAMS (NCPDP) TELECOMMUNI-
5 CATIONS STANDARDS.—The replacement of the
6 National Council for Prescription Drug Pro-
7 grams (NCPDP) Telecommunications Stand-
8 ards version 5.1 adopted under section 1173(a)
9 of such Act (42 U.S.C. 1320d-2(a)) with which-
10 ever is the latest version (as determined by the
11 Secretary) of the NCPDP Telecommunications
12 Standards that has been approved by such
13 Council and reviewed by the National Com-
14 mittee on Vital Health Statistics as of April 1,
15 2008.

16 (2) APPLICATION.—The replacements made by
17 paragraph (1) shall apply, for purposes of section
18 1175(b)(2) of the Social Security Act (42 U.S.C.
19 1320d-4(b)(2)), to transactions occurring on or after
20 April 1, 2009.

21 (3) NO JUDICIAL REVIEW.—The determination
22 of the latest version under paragraph (1)(B) shall
23 not be subject to judicial review.

24 (b) UPGRADING ICD CODES.—

1 (1) IN GENERAL.—The Secretary of Health and
2 Human Services shall provide by notice published in
3 the Federal Register for the replacement of the
4 International Classification of Diseases, 9th revision,
5 Clinical Modification (ICD–9–CM) under the regula-
6 tion promulgated under section 1173(c) of the Social
7 Security Act (42 U.S.C. 1320d-2(c)), including for
8 purposes of part A of title XVIII of such Act, with
9 both of the following:

10 (A) The International Classification of
11 Diseases, 10th revision, Clinical Modification
12 (ICD–10–CM).

13 (B) The International Classification of
14 Diseases, 10th revision, Procedure Coding Sys-
15 tem (ICD–10–PCS).

16 (2) APPLICATION.—The replacement made by
17 paragraph (1) shall apply, for purposes of section
18 1175(b)(2) of the Social Security Act (42 U.S.C.
19 1320d-4(b)(2)), to services furnished on or after Oc-
20 tober 1, 2009,

21 (3) RULES OF CONSTRUCTION.—Nothing in
22 paragraph (1) shall be construed—

23 (A) as affecting the application of classi-
24 fication methodologies or codes, such as CPT or

1 HCPCS codes, other than under the Inter-
2 national Classification of Diseases (ICD); or

3 (B) as superseding the authority of the
4 Secretary of Health and Human Services to
5 maintain and modify the coding set for ICD-
6 10-CM and ICD-10-PCS, including under the
7 amendments made by section 6.

8 (c) APPLICATION OF UPGRADED STANDARDS UNDER
9 PART A OF THE MEDICARE PROGRAM.—Section 1816 of
10 the Social Security Act (42 U.S.C. 1395h) is amended by
11 inserting after subsection (a) the following new subsection:

12 “(b) With respect to—

13 “(1) transactions under this part occurring on
14 or after April 1, 2009, all providers of services shall
15 use ASC X12 version 5010 with respect to services
16 provided under this part in compliance with section
17 5(a) of the Health Information Technology Pro-
18 motion Act of 2006; and

19 “(2) services furnished on or after October 1,
20 2009—

21 “(A) all providers of services shall use
22 ICD-10-CM codes with respect to services pro-
23 vided under this part in compliance with section
24 5(b) of such Act; and

1 “(B) hospitals shall use ICD–10–PCS
2 codes (as well as ICD–10–CM codes) with re-
3 spect to inpatient hospital services provided
4 under this part in compliance with such sec-
5 tion.”.

6 **SEC. 6. PROCEDURES TO ENSURE TIMELY UPDATING OF**
7 **STANDARDS THAT ENABLE ELECTRONIC EX-**
8 **CHANGES.**

9 Section 1174(b) of the Social Security Act (42 U.S.C.
10 1320d-3(b)) is amended—

11 (1) in paragraph (1)—

12 (A) in the first sentence, by inserting “and
13 in accordance with paragraph (3)” before the
14 period; and

15 (B) by adding at the end the following new
16 sentence: “For purposes of this subsection and
17 section 1173(c)(2), the term ‘modification’ in-
18 cludes a new version or a version upgrade.”;
19 and

20 (2) by adding at the end the following new
21 paragraph:

22 “(3) EXPEDITED PROCEDURES FOR ADOPTION
23 OF ADDITIONS AND MODIFICATIONS TO STAND-
24 ARDS.—

1 “(A) IN GENERAL.—For purposes of para-
2 graph (1), the Secretary shall provide for an ex-
3 pedited upgrade program (in this paragraph re-
4 ferred to as the ‘upgrade program’), in accord-
5 ance with this paragraph, to develop and ap-
6 prove additions and modifications to the stand-
7 ards adopted under section 1173(a) to improve
8 the quality of such standards or to extend the
9 functionality of such standards to meet evolving
10 requirements in health care.

11 “(B) PUBLICATION OF NOTICES.—Under
12 the upgrade program:

13 “(i) VOLUNTARY NOTICE OF INITI-
14 ATION OF PROCESS.—Not later than 30
15 days after the date the Secretary receives
16 a notice from a standard setting organiza-
17 tion that the organization is initiating a
18 process to develop an addition or modifica-
19 tion to a standard adopted under section
20 1173, the Secretary shall publish a notice
21 in the Federal Register that—

22 “(I) identifies the subject matter
23 of the addition or modification;

1 “(II) provides a description of
2 how persons may participate in the
3 development process; and

4 “(III) invites public participation
5 in such process.

6 “(ii) VOLUNTARY NOTICE OF PRE-
7 LIMINARY DRAFT OF ADDITIONS OR MODI-
8 FICATIONS TO STANDARDS.—Not later
9 than 30 days after the date the Secretary
10 receives a notice from a standard setting
11 organization that the organization has pre-
12 pared a preliminary draft of an addition or
13 modification to a standard adopted by sec-
14 tion 1173, the Secretary shall publish a
15 notice in the Federal Register that—

16 “(I) identifies the subject matter
17 of (and summarizes) the draft;

18 “(II) specifies the procedure for
19 obtaining documentation for the draft;

20 “(III) provides a description of
21 how persons may submit comments in
22 writing and at any public hearing or
23 meeting held by the organization on
24 the draft; and

1 “(IV) invites submission of such
2 comments and participation in such
3 hearing or meeting.

4 “(iii) NOTICE OF PROPOSED ADDITION
5 OR MODIFICATION TO STANDARDS.—Not
6 later than 30 days after the date the Sec-
7 retary receives a notice from a standard
8 setting organization that the organization
9 has a proposed addition or modification to
10 a standard adopted under section 1173
11 that the organization intends to submit
12 under subparagraph (D)(iii), the Secretary
13 shall publish a notice in the Federal Reg-
14 ister that contains, with respect to the pro-
15 posed addition or modification, the infor-
16 mation required in the notice under clause
17 (ii) with respect to a preliminary draft of
18 an addition or modification.

19 “(iv) CONSTRUCTION.—Nothing in
20 this paragraph shall be construed as re-
21 quiring a standard setting organization to
22 request the notices described in clauses (i)
23 and (ii) with respect to an addition or
24 modification to a standard in order to
25 qualify for an expedited determination

1 under subparagraph (C) with respect to a
2 proposal submitted to the Secretary for
3 adoption of such addition or modification.

4 “(C) PROVISION OF EXPEDITED DETER-
5 MINATION.—Under the upgrade program and
6 with respect to a proposal by a standard setting
7 organization for an addition or modification to
8 a standard adopted under section 1173, if the
9 Secretary determines that the standard setting
10 organization developed such addition or modi-
11 fication in accordance with the requirements of
12 subparagraph (D) and the National Committee
13 on Vital and Health Statistics recommends ap-
14 proval of such addition or modification under
15 subparagraph (E), the Secretary shall provide
16 for expedited treatment of such proposal in ac-
17 cordance with subparagraph (F).

18 “(D) REQUIREMENTS.—The requirements
19 under this subparagraph with respect to a pro-
20 posed addition or modification to a standard by
21 a standard setting organization are the fol-
22 lowing:

23 “(i) REQUEST FOR PUBLICATION OF
24 NOTICE.—The standard setting organiza-
25 tion submits to the Secretary a request for

1 publication in the Federal Register of a no-
2 tice described in subparagraph (B)(iii) for
3 the proposed addition or modification.

4 “(ii) PROCESS FOR RECEIPT AND
5 CONSIDERATION OF PUBLIC COMMENT.—

6 The standard setting organization provides
7 for a process through which, after the pub-
8 lication of the notice referred to under
9 clause (i), the organization—

10 “(I) receives and responds to
11 public comments submitted on a time-
12 ly basis on the proposed addition or
13 modification before submitting such
14 proposed addition or modification to
15 the National Committee on Vital and
16 Health Statistics under clause (iii);
17 and

18 “(II) make publicly available a
19 written explanation for its response in
20 the proposed addition or modification
21 to comments submitted on a timely
22 basis.

23 “(iii) SUBMITTAL OF FINAL PRO-
24 POSED ADDITION OR MODIFICATION TO
25 NCVHS.—After completion of the process

1 under clause (ii), the standard setting or-
2 ganization submits the proposed addition
3 or modification to the National Committee
4 on Vital and Health Statistics for review
5 and consideration under subparagraph (E).
6 Such submission shall include information
7 on the organization's compliance with the
8 notice and comment requirements (and re-
9 sponses to those comments) under clause
10 (ii).

11 “(E) HEARING AND RECOMMENDATIONS
12 BY NATIONAL COMMITTEE ON VITAL AND
13 HEALTH STATISTICS.—Under the upgrade pro-
14 gram, upon receipt of a proposal submitted by
15 a standard setting organization under subpara-
16 graph (D)(iii) for the adoption of an addition or
17 modification to a standard, the National Com-
18 mittee on Vital and Health Statistics shall pro-
19 vide notice to the public and a reasonable op-
20 portunity for public testimony at a hearing on
21 such addition or modification. The Secretary
22 may participate in such hearing in such capac-
23 ity (including presiding ex officio) as the Sec-
24 retary shall determine appropriate. Not later
25 than 120 days after the date of receipt of the

1 proposal, the Committee shall submit to the
2 Secretary its recommendation to adopt (or not
3 adopt) the proposed addition or modification.

4 “(F) DETERMINATION BY SECRETARY TO
5 ACCEPT OR REJECT NATIONAL COMMITTEE ON
6 VITAL AND HEALTH STATISTICS RECOMMENDA-
7 TION.—

8 “(i) TIMELY DETERMINATION.—
9 Under the upgrade program, if the Na-
10 tional Committee on Vital and Health Sta-
11 tistics submits to the Secretary a rec-
12 ommendation under subparagraph (E) to
13 adopt a proposed addition or modification,
14 not later than 90 days after the date of re-
15 ceipt of such recommendation the Sec-
16 retary shall make a determination to ac-
17 cept or reject the recommendation and
18 shall publish notice of such determination
19 in the Federal Register not later than 30
20 days after the date of the determination.

21 “(ii) CONTENTS OF NOTICE.—If the
22 determination is to reject the recommenda-
23 tion, such notice shall include the reasons
24 for the rejection. If the determination is to
25 accept the recommendation, as part of

1 such notice the Secretary shall promulgate
2 the modified standard (including the ac-
3 cepted proposed addition or modification
4 accepted) as a final rule under this sub-
5 section without any further notice or public
6 comment period.

7 “(iii) LIMITATION ON CONSIDER-
8 ATION.—The Secretary shall not consider a
9 proposal under this subparagraph unless
10 the Secretary determines that the require-
11 ments of subparagraph (D) (including pub-
12 lication of notice and opportunity for pub-
13 lic comment) have been met with respect to
14 the proposal.

15 “(G) TREATMENT AS SATISFYING RE-
16 QUIREMENTS FOR NOTICE-AND-COMMENT.—
17 Any requirements under section 553 of title 5,
18 United States Code, relating to notice and an
19 opportunity for public comment with respect to
20 a final rule promulgated under subparagraph
21 (F) shall be treated as having been met by
22 meeting the requirements of the notice and op-
23 portunity for public comment provided under
24 provisions of subparagraphs (B)(iii), (D), and
25 (E).

1 “(H) NO JUDICIAL REVIEW.—A final rule
2 promulgated under subparagraph (F) shall not
3 be subject to judicial review.”.

4 **SEC. 7. REPORT ON THE AMERICAN HEALTH INFORMATION**
5 **COMMUNITY.**

6 Not later than one year after the date of the enact-
7 ment of this Act, the Secretary of Health and Human
8 Services shall submit to Congress a report on the work
9 conducted by the American Health Information Commu-
10 nity (in this section referred to as “AHIC”), as established
11 by the Secretary. Such report shall include the following:

12 (1) A description of the accomplishments of
13 AHIC, with respect to the promotion of the develop-
14 ment of a nationwide health information network
15 and the increased adoption of health information
16 technology.

17 (2) Information identifying the practices that
18 are used to protect health information and to guar-
19 antee confidentiality and security of such informa-
20 tion.

21 (3) Information on the progress in—

22 (A) establishing uniform industry-wide
23 health information technology standards;

24 (B) achieving an internet-based nationwide
25 health information network;

1 (C) achieving interoperable electronic
2 health record adoption across health care pro-
3 viders; and

4 (D) making available technological and
5 other innovations to ensure the security and
6 confidentiality of health information in the pro-
7 motion of health information technology.

8 (4) Recommendations for the transition of the
9 AHIC to a permanent entity, including—

10 (A) a schedule for such transition;

11 (B) options for structuring the entity as ei-
12 ther a public-private or private sector entity;

13 (C) the collaborative role of the Federal
14 Government in the entity; and

15 (D) the ongoing responsibilities of the enti-
16 ty, such as providing the leadership and plan-
17 ning in establishing standards, certifying health
18 information technology, and providing long-term
19 governance for health care transformation
20 through technology.

21 **SEC. 8. STRATEGIC PLAN FOR COORDINATING IMPLEMEN-**
22 **TATION OF HEALTH INFORMATION TECH-**
23 **NOLOGY.**

24 (a) IN GENERAL.—Not later than 180 days after the
25 date of the enactment of this Act, the Secretary of Health

1 and Human Services, in consultation with public and pri-
2 vate entities involved in the area of health information
3 technology, shall develop a strategic plan related to the
4 need for coordination in such area.

5 (b) COORDINATION OF SPECIFIC IMPLEMENTATION
6 PROCESSES.—The strategic plan under subsection (a)
7 shall address the need for coordination in the implementa-
8 tion of the following:

9 (1) HEALTH INFORMATION TECHNOLOGY
10 STANDARDS.—Health information technology stand-
11 ards approved under section 271(c)(3)(B)(i) of the
12 Public Health Service Act, as added by section 2.

13 (2) HIPAA TRANSACTION STANDARDS.—Trans-
14 action standards under section 1173(a) of the Social
15 Security Act (42 U.S.C. 1320d-2(d)).

16 (3) UPDATED ICD CODES.—The International
17 Statistical Classification of Diseases and Related
18 Health Problems, 10th revision, Clinical Modifica-
19 tion (ICD–10–CM) and the International Statistical
20 Classification of Diseases and Related Health Prob-
21 lems, 10th revision, Procedure Coding System
22 (ICD–10–PCS) described in section 5.

23 (c) COORDINATION AMONG SPECIFIC FEDERAL EN-
24 TITIES.—The strategic plan under subsection (a) shall ad-
25 dress any methods to coordinate, with respect to the elec-

1 tronic exchange of health information, actions taken by
2 the following entities:

3 (1) The Office of the National Coordinator for
4 Health Information Technology.

5 (2) The American Health Information Commu-
6 nity.

7 (3) The Office of Electronic Standards and Se-
8 curity of the Centers for Medicare and Medicaid
9 Services.

10 (4) The National Committee on Vital Health
11 Statistics.

12 (5) Any other entity involved in the electronic
13 exchange of health information that the Secretary
14 determines appropriate.

15 **SEC. 9. PROMOTION OF TELEHEALTH SERVICES.**

16 (a) FACILITATING THE PROVISION OF TELEHEALTH
17 SERVICES ACROSS STATE LINES.—

18 (1) IN GENERAL.—The Secretary of Health and
19 Human Services shall, in coordination with rep-
20 resentatives of States, physicians, health care practi-
21 tioners, and patient advocates, encourage and facili-
22 tate the adoption of State reciprocity agreements for
23 practitioner licensure in order to expedite the provi-
24 sion across State lines of telehealth services.

1 (2) REPORT.—Not later than 18 months after
2 the date of the enactment of this Act, the Secretary
3 shall submit to Congress a report on the actions
4 taken to carry out paragraph (1).

5 (3) STATE DEFINED.—In this subsection, the
6 term “State” has the meaning given that term for
7 purposes of title XVIII of the Social Security Act.

8 (b) USE OF STORE AND FORWARD TECHNOLOGY.—

9 (1) STUDY.—The Secretary of Health and
10 Human Services, acting through the Director of the
11 Office for the Advancement of Telehealth, shall con-
12 duct a study on the use of store and forward tech-
13 nologies (that provide for the asynchronous trans-
14 mission of health care information in single or multi-
15 media formats) in the provision of telehealth services
16 for which payment may be made under the Medicare
17 program. Such study shall include an assessment of
18 the feasibility, advisability, and the costs of expand-
19 ing the use of such technologies for use in the diag-
20 nosis and treatment of certain conditions.

21 (2) REPORT.—Not later than 18 months after
22 the date of the enactment of this Act, the Secretary
23 shall submit to Congress a report on the study con-
24 ducted under paragraph (1) and shall include in
25 such report such recommendations for legislation or

1 administration action as the Secretary determines
2 appropriate.

3 (c) EXPANSION OF TELEHEALTH SERVICES.—

4 (1) STUDY.—The Secretary of Health and
5 Human Services, in coordination with the Office for
6 the Advancement of Telehealth, the Agency for
7 Healthcare Research and Quality, and the Centers
8 for Medicare and Medicaid Services, shall conduct a
9 study to determine the feasibility, advisability, and
10 the costs of—

11 (A) including coverage and payment for
12 home health-related telehealth services as part
13 of home health services under title XVIII of the
14 Social Security Act; and

15 (B) expanding the list of sites described in
16 paragraph (4)(C)(ii) of section 1834(m) of the
17 Social Security Act (42 U.S.C. 1395m(m)) to
18 include county mental health clinics or other
19 publicly funded mental health facilities for the
20 purpose of payment under such section for the
21 provision of telehealth services at such clinics or
22 facilities.

23 (2) SPECIFICS OF STUDY.—Such study shall
24 demonstrate whether the changes described in sub-

1 paragraphs (A) and (B) of paragraph (1) will result
2 in the following:

3 (A) Enhanced health outcomes for individ-
4 uals with one or more chronic conditions.

5 (B) Health outcomes for individuals fur-
6 nished telehealth services or home health-re-
7 lated telehealth services that are at least com-
8 parable to the health outcomes for individuals
9 furnished similar items and services by a health
10 care provider at the same location of the indi-
11 vidual or at the home of the individual, respec-
12 tively.

13 (C) Facilitation of communication of more
14 accurate clinical information between health
15 care providers.

16 (D) Closer monitoring of individuals by
17 health care providers.

18 (E) Overall reduction in expenditures for
19 health care items and services.

20 (F) Improved access to health care.

21 (3) HOME HEALTH-RELATED TELEHEALTH
22 SERVICES DEFINED.—For purposes of this sub-
23 section, the term “home health-related telehealth
24 services” means technology-based professional con-
25 sultations, patient monitoring, patient training serv-

1 ices, clinical observation, patient assessment, and
2 any other health services that utilize telecommuni-
3 cations technologies. Such term does not include a
4 telecommunication that consists solely of a telephone
5 audio conversation, facsimile, electronic text mail, or
6 consultation between two health care providers.

7 (4) REPORT.—Not later than 18 months after
8 the date of the enactment of this Act, the Secretary
9 shall submit to Congress a report on the study con-
10 ducted under subparagraph (1) and shall include in
11 such report such recommendations for legislation or
12 administration action as the Secretary determines
13 appropriate.